United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: February 26, 2007

TO : Richard L. Ahearn, Regional Director
Region 19

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: ILWU Local 23, ILWU Local 19, 536-2545-0000-0000
ILWU Local 8, ILWU International, 548-6001-6200-0000
Pacific Maritime Association 548-6030-0150-0000
Case Nos. 19-CB-9377, 9411, 9412, 9413, 9422, 9423, 9462, and 19-CA-30180

The Region submitted these Section 8(b)(1)(A) and 8(a)(1) and (3) cases for advice as to whether: (1) non-members of the Union who are registered with the Union/Employer joint hiring hall could be required to pay for certain International Union expenditures; (2) non-members who are not currently using the hiring hall due to injury could be required to pay their monthly pro rata hiring hall fee; and (3) the Employer should be held jointly and severally liable with the Union for any fees unlawfully charged by the joint Union/Employer hiring hall.

We conclude that the Union unlawfully charged non-members for its litigation expenses incurred in a prior unfair labor practice case and the instant cases, and for its work on the TWIC worker identification program. We further conclude that: the Union lawfully charged non-members for its expenditures related to its "Fighting Fund," specifically involving the Clerks Technology Committee, the LAXT Claims, and the Alaska Cruiseship Observation Committee, as these expenditures supported efforts to preserve and maintain work opportunities available to hiring hall users and were thus directly related to the operation of the hiring hall; the Union lawfully required non-members who are not currently using the hiring hall due to injury to pay their monthly pro rata hiring hall fee; and the Employer violated Section 8(a)(1) and (3), and should be assigned secondary liability in compliance, based on its involvement as joint operator of the hiring halls which required non-members to pay unlawfully excessive hiring hall fees.

FACTS

The International Longshore and Warehouse Union (the Union) is the certified bargaining representative of a single unit of all longshore workers and marine clerks employed by members of the Pacific Maritime Association (the Employer) in west coast ports located in California, Oregon, and Washington. The Employer is a multi-employer association whose members are domestic and international ocean carriers, stevedore, and marine terminal companies. The Union and the Employer are parties to a collective-bargaining agreement under which the Union and the Employer jointly administer and operate hiring halls that dispatch workers to available jobs. Under the parties' collective bargaining agreement, registered longshoremen and marine clerks may travel or transfer outside their home port to work.

The hiring halls dispatch longshore workers in the following order: (1) fully registered longshoremen (Class A); (2) limited registered longshoremen (Class B); (3) identified casuals; and (4) unidentified casuals. Class A registered longshoremen are admitted to membership in the Union and are subject to a union security clause. Class B longshoremen are not entitled to Union membership or included in the union security clause, but are required to pay the "pro rata share" of the hiring hall costs determined by the Joint Port Labor Relations Committees, which are comprised of Union and Employer representatives. Class B longshoremen are paid under the same wage scale as Class A longshoremen, receive substantially the same contractual benefits, and are typically elevated to Class A status within five years.

Each hiring hall has its own fee structure and collects the monthly fee from all hiring hall users, who must go to the hall to be dispatched. At least some of the hiring halls require registered non-member hiring hall users who are unable to work due to injury or medical leave to pay some or the entire hiring hall fee.

For each Class A or Class B longshoreman registered with the applicable hiring hall, the local unions are required to remit monthly an amount of $72.46 to the International Union (the International Fee). It is not clear whether, during the 10(b) period, all of the local

unions charged all Class B longshoremen for the entire International Fee.[1]

In January 2006, a former employee of the Employer filed the charges in the instant cases against the Union, the Employer, and three ILWU local unions in Oregon and Washington. The charges allege that the Union and the Employer violated Sections 8(b)(1)(A) and 8(a)(1) and (3), by charging non-member Class B longshoremen hiring hall fees in excess of their pro rata share of the cost of operating the hiring hall. The Region has determined that the local unions have presented sufficient evidence that their respective expenses were directly related to the operation of each of the joint hiring halls and, therefore, were lawfully chargeable to non-member hiring hall users.[2] Thus, the issues addressed here do not involve the local unions' hiring hall expenditures, but instead are limited to certain International Union expenditures.

Specifically, the Region has requested advice as to whether the Union may charge non-member Class B longshoremen for the following International Union expenditures: (1) the Union's work on a prior unfair labor practice case involving the hiring system utilized to select casual employees, as well as on the instant unfair labor practice charges; (2) the Union's Port Security Committee's compliance work on the Transportation Workers Identification Credential (TWIC) program, a federally-mandated worker identification program; and (3) the Union's Fighting Fund's expenditures connected with the Clerks Technology Committee, the LAXT Claims, and the Alaska Cruiseship Observation committee. The Region further submitted for advice the issue of whether the hiring halls may require injured Class B longshoremen who are not

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[1] Of course, even if certain of the International Union expenditures were non-chargeable, any finding of violation and/or remedy would be limited to the extent to which non-members were in fact charged for such expenditures during the 10(b) period.

[2] This determination was based on the articulation of the legal standard to be applied in cases involving non-member hiring hall fees set forth in our previous memorandum in these cases. ILWU Local 23, ILWU, Pacific Maritime Association, Cases 19-CB-9377, 19-CB-9411, and 19-CA-30180, Advice Memorandum dated April 28, 2006. Region 21 is still investigating the local hiring hall fees charged by the hiring halls in San Diego and Los Angeles, California.

available for work to pay their pro rata fees. Finally, the Region requested advice as to whether the Employer, as joint operator of the hiring halls, should be held jointly and severally liable with the Union for any excess in fees charged to Class B longshoremen.

ACTION

We conclude that the Union unlawfully charged non-members for its litigation expenses incurred in a prior unfair labor practice case and the instant cases, and for its work on the TWIC worker identification program. We further conclude: that the Union lawfully charged non-members for its expenditures related to its "Fighting Fund," specifically involving the Clerks Technology Committee, the LAXT Claims, and the Alaska Cruiseship Observation Committee, as these expenditures supported efforts to preserve and maintain work opportunities available to hiring hall users and were thus directly related to the operation of the hiring hall; that the Union lawfully required non-members who are not currently using the hiring hall due to injury to pay their monthly pro rata hiring hall fee; and that the Employer violated Section 8(a)(1) and (3), and should be assigned secondary liability in compliance, based on its involvement as joint operator of the hiring halls which required non-members to pay unlawfully excessive hiring hall fees.

In our previous memorandum in these cases, we articulated the legal standard to be used in cases involving the amount a union may lawfully charge nonmember hiring hall users. Under this standard:

> [A] union may lawfully charge non-member hiring hall users their pro rata share of all expenses directly related to the operation of the hiring hall, including the costs of maintaining and policing the hiring hall contract, although it may not charge non-member hiring hall users for any membership benefits, institutional costs, or other activities or representational expenses not directly related to the operation of the hiring hall.[3]

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[3] ILWU Local 23, ILWU, Pacific Maritime Association, Cases 19-CB-9377, 19-CB-9411, and 19-CA-30180, Advice Memorandum dated April 28, 2006, at 3.

I. Unfair Labor Practice Litigation Expenses

In January 2005, the Union's lobbying and litigation office in Washington, D.C. worked to defend the Union against an unfair labor practice charge challenging the referral system for the selection of casual employees. Specifically, the Washington, D.C. office provided input to the Division of Advice regarding the lawfulness of the Employer and Union's collectively bargained for hiring system for casual employees.[4] In May 2006, a Union caucus at the International level comprised of delegates elected from the local unions met to review and approve the reports of various committees and subcommittees. According to the meeting minutes, while the caucus did not directly discuss the dispatch of longshore workers or the operation of the hiring hall, it discussed the instant unfair labor practice charges which involve, inter alia, the chargeability of certain expenditures to Class B longshoremen. The Union asserts that these two litigation-related expenses are properly chargeable to non-member Class B longshoremen because they both directly relate to the operation of the hiring hall -- the Washington, D.C. office's work on the prior unfair labor practice case because the casual employees' hiring hall referral and selection criteria directly impacts the pool of hiring hall users, and the caucus's work on the instant unfair labor practice cases because the chargeability of certain Union expenditures directly impacts the amount properly chargeable to non-member hiring hall users.

We conclude that the Union violated Section 8(b)(1)(A) by charging the non-member Class B longshoremen for the litigation expenses related to both of these matters. In J.J. Hagerty, Inc. (Hagerty II),[5] the Board agreed with the General Counsel's formulation of "an acceptable method" for determining the types of expenditures for which a union may lawfully charge non-members who use an exclusive hiring

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[4] In that case, the Division of Advice concluded that Region 21 should dismiss the allegations because the parties had nondiscriminatory business justifications for the hiring system, which included referrals, applications from the general public, and selection by lottery. Pacific Maritime Association, Case 21-CB-13718, et al., Advice Memorandum dated January 25, 2005.

[5] 153 NLRB 1375, 1377 (1965), enfd. 385 F.2d 874 (2d Cir. 1967), cert. denied, 391 U.S. 904 (1968).

hall. The Board held that a union may not charge non-member hiring hall users for institutional expenses incurred by the union as an organization, and specifically prohibited the union there from charging for "expenses connected with litigating this case and other related cases before the Board."[6] Thus, the Haggerty II Board excluded the union's litigation expenses because they involved the union defending itself against unfair labor practice charges in its own interest, which may properly be considered institutional expenses incurred by the union as an organization. This is distinguishable from undertaking or participating in litigation seeking to maintain and/or police the hiring hall contract in the interest of the hiring hall users, which may be considered to be directly related to the operation of the hiring hall and properly chargeable.

In the instant cases, as in Hagerty II, all of the litigation-related expenses at issue were incurred by the Union in disputes in which the Union was merely defending itself against unfair labor practice charges, and not seeking to enforce or police the hiring hall agreement. Therefore, as in Hagerty II, we conclude that the Union was acting in its own institutional interest in the litigation, and that it cannot charge non-members for the work involved in defending itself in either the prior casual selection unfair labor practice case or the instant unfair labor practices cases.

The Union contends that these expenses, particularly those related to the earlier case involving the casual selection referral system, were directly related to the operation of the hiring hall, even if they arose in the context of the Union's defense against an unfair labor practice charge. If the Employer and Union lost its earlier case, it would have to alter its casual employee referral system and, if a violation is found here, the Union would be required to change the fees charged to non-member hiring hall users. Because of these effects on the hiring halls, the Union maintains that these unfair labor practice cases and the expenses related to them were directly related to the operation of the hiring hall. Given the Board's decision in Hagerty II, however, wherein it adopted a formula which specifically precluded the union there from charging non-members for litigation expenses associated with unfair labor practice cases, we conclude that the unfair labor practice case litigation expenses

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[6] Id. at 1379.

involved here are not properly chargeable to the non-member Class B longshoremen.

II. TWIC Program Expenses

The Union also asserts as chargeable certain expenses of its Port Security Committee related to compliance with the Transportation Workers Identification Credential (TWIC) program. The TWIC program is a Transportation Security Administration (TSA) program expected to impact over 750,000 port employees, including longshore workers. It will involve the enrollment of all workers, require background checks, the issuance of identification cards (to be paid for by employees at a cost of between $139 and $159), and require port authorities to install biometric card readers and database systems linked to TSA systems to track workers. On January 7, 2007, Congress issued the final rules in the TWIC program, and enrollment in the program is expected to begin sometime in March.[7] The Region issued a subpoena to the Union requesting information on the Union's activities and involvement in complying with the TWIC program, and the nature of the charged expenses, but the Union did not provide any information or evidence as to the specific measures it undertook to comply with the TWIC Program. The Union has only stated that the 2005 expenditure represents its compliance work on the TWIC program.

We conclude that the Union violated Section 8(b)(1)(A) by charging non-members for this expenditure, because the evidence at this time does not demonstrate that the work on the TWIC Program was directly related to the operation of the hiring hall. As discussed above, a union may lawfully charge non-member hiring hall users only their pro rata share of expenses directly related to the operation of the hiring hall.[8] We recognize that the TWIC program may ultimately be found to be directly related to the operation of the dispatch hall, as all longshore workers will be required to undergo a background check and obtain a TWIC card in order to gain access to the ports -- if an employee does not have a TWIC card, he will be ineligible for dispatch. However, we cannot determine here whether the expenses are chargeable because the Union has provided no information or evidence as to the nature of these expenses,

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[7] See http://www.tsa.gov/

[8] Morrison-Knudson Co., 291 NLRB 250, 251 (1988); IATSE, Local 640 (Associated Independent Theatre Co.), 185 NLRB 552, 558 (1970); Local 825, Operating Engineers (Homan), 137 NLRB 1043, 1044 (1962).

or even as to what measures it undertook to comply with the TWIC program. The nature of these expenses is further obscured by the fact that the TWIC program rules were not finalized and did not take effect until January 2007, while the Union's expenditures at issue were incurred in 2005. Therefore, based on this lack of evidence, we conclude that the Port Security Committee's expenditure in connection with the TWIC program is not chargeable to non-member Class B longshoremen.

III. The Fighting Fund Expenses – the Clerks Technology Committee, the LAXT Claims, and the Alaska Cruiseship Observation Committee

In 1984, the Union created its "Fighting Fund" for "the purpose of conducting an aggressive and forward-looking program to preserve, and where possible, expand the jurisdiction of the ILWU over jobs in the shipping and cargo handling industry." The Union represents a coast-wide unit that is geographically multi-port and covers a variety of unit work, including longshore and marine clerk work. Based on its multi-port and wide-ranging work jurisdiction, as well as the allowance for inter-port travel, the Union maintains that the Fighting Fund's efforts, which seek to preserve and "recapture" jobs, is directly related to the operation of the hiring halls. This is because, simply put, without these efforts to preserve and gain jobs for the hiring halls, there would be no hiring halls. The Fighting Fund expenditures at issue in the instant cases involve the Clerks Technology Committee, the LAXT claims, and the Alaska Cruiseship Observation Committee.

A. The Clerks Technology Committee

The Clerks Technology Committee is responsible for activities related to preserving and securing marine clerk work impacted by the introduction of new technologies under the "Technology Framework." The Technology Framework provides governing principles and special grievance/arbitration procedures for determining the number and type of marine clerk jobs that survive or arise from new technologies. The Union has provided minutes of various meetings where the Technology Framework procedures in general were discussed, as well as various arbitration awards concerning the Technology Framework procedures.

B. The LAXT Claims

The LAXT Claims expenditure relates to a jurisdictional dispute that took place at the Los Angeles port. A non-union employer (LAXT) built a new facility where ILWU longshore work had historically been performed. The Union, along with its Los Angeles longshore local unions, worked to preserve and recapture longshore jobs with respect to waterfront storage and the loading and unloading of coal from LAXT's ships.

C. The Alaska Cruiseship Observation Committee

The final Fighting Fund expenditure at issue involves the Alaska Cruiseship Observation Committee. This committee focuses on preserving the Union's jurisdiction over longshore jobs and work in the cruise ship industry. Cruise ship jobs that include traditional longshore work involve the loading and unloading of passenger luggage and ship supplies. Such work is regularly performed in the ports of Los Angeles, Long Beach, San Francisco, and Seattle. ILWU longshoremen perform cruise ship work through stevedore companies that are members of the Employer.

The Alaska cruise ship work is performed under a separate collective bargaining agreement and is not covered by the collective bargaining agreement applicable to the west coast bargaining unit. However, the Union argues that the terms and conditions of Alaska cruise ship work closely match that of the west coast cruise work because the west coast and Alaska ports service the same cruise ships operated by the same companies, which travel the same routes and utilize the same longshore work. Accordingly, the Union argues that the problems concerning the number of jobs and scope of work for longshore workers in the Alaska ports directly impact the same concerns in the west coast ports, and vice versa. To prevent the practices in the Alaska ports from spreading to the west coast ports, the committee resolved to send 40 west coast longshoremen to observe cruise ship operations in Alaska.

We conclude that the charge allegations involving all three of the Fighting Fund expenditures should be dismissed, absent withdrawal, because they all involved the Union's efforts to secure and preserve work jurisdiction for the coast-wide bargaining unit. Thus, these expenditures are chargeable because they are "relevant to job opportunities for nonmembers, or even to their

continued employment or subsequent job opportunities"[9] and involve "securing and maintaining sources of employment under contractual terms and conditions."[10]

Initially, the Clerks Technology Committee's expenditures are chargeable because the Union's efforts to preserve or recapture marine clerk work in the aftermath of new technologies directly relate to the work opportunities available to all hiring hall users. We note that the Union's efforts to preserve or recapture marine clerk work directly benefits not just marine clerks, but all Class A, Class B, and casual longshore workers. In virtually all of the ports, both marine clerk jobs and longshore jobs become regularly available to Class B longshoremen. Indeed, the evidence demonstrates the assignment of hundreds of marine clerk shifts to longshore workers, as well as the assignment of hundreds of longshore and marine clerk shifts to visitors (Class A and B longshoremen traveling or visiting from other ports). Therefore, it is clear that preserving or increasing the number of marine clerk jobs available at any of the hiring halls directly increases the work referral opportunities for all hiring hall users.

Next, the expenditures related to the LAXT Claims in the Los Angeles port are similarly chargeable, as the LAXT dispute involved the Union's efforts to preserve work that had traditionally and historically been performed by longshore workers at the Los Angeles port. The Union's efforts in this dispute succeeded in preserving jobs for the hiring hall and preventing other facilities at the Los Angeles port from operating non-union. Thus, the LAXT dispute involved Union activities and expenditures related to securing and maintaining sources of employment under contractual terms and conditions and, therefore, was directly related to the operation of the hiring hall and chargeable to non-member hiring hall users.

Finally, the expenses related to the Alaska Cruiseship Observation Committee are also chargeable to Class B longshoremen. Although the Alaska cruise work is performed under a separate collective bargaining agreement, the west coast and Alaska ports service the same cruise ships operated by the same companies, which travel the same routes and utilize the same longshore work (e.g., the loading and unloading of passengers' luggage and ship supplies). Such traditional longshore work is regularly

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[9] Hagerty II, supra, 153 NLRB at 1379-1380.

[10] Homan, supra, 137 NLRB at 1044.

performed in the west coast ports and regularly assigned through the hiring halls. Consequently, any issues concerning the preservation and scope of jurisdiction, as well as working conditions, for cruise ship work in the Alaska ports necessarily and directly affect such matters in the west coast ports. In addition, because all Class B registered longshoremen may travel to ports such as Seattle where they can and do get dispatched to cruise line work, the expenses related to preserving, securing, and administering cruiseline work increases the overall work opportunity for the entire bargaining unit on a coast-wide basis.

In sum, all three Fighting Fund expenditures at issue involve Union efforts to secure and preserve work jurisdiction which increases hiring hall referral opportunities for the unit as a whole. Therefore, the expenditures related to the Clerks Technology Committee, the LAXT Claims, and the Alaska Cruiseship Observation Committee are directly related to the operation of the hiring hall and are all properly chargeable to Class B longshoremen.

IV. Requirement of Fees from Non-members on Disability

Class B longshoremen are required to pay some or all of their monthly hiring hall fees or risk deregistration, even if they are unable to work due to injury or medical leave. Thus, for example, the Los Angeles, California hiring hall (Local 13) charges such Class B longshoremen a monthly fee of $77.40, and the Tacoma, Washington hiring hall (Local 23) charges a monthly fee of $79.[11] The International Fee paid to the Union by the local unions remains constant whether a longshoreman pays a part or the entire amount of the hiring hall fee. For example, of the $79 monthly fee Local 23 receives from a longshoreman on disability, $72.46 (i.e., the International Fee) is allocated to the International Union for its expenses, leaving $6.43 to pay for Local 23's hiring hall expenses.

Injured or disabled longshore workers may remain registered at the hiring halls even when they are unable to work; when they are able to return to work, they return as

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[11] The halls in Seattle, Washington and San Diego, California do not charge Class B longshoremen a monthly fee when they are out on disability. It is unclear how much the Portland, Oregon hall charges injured Class B longshoremen, but it appears that it may charge the full amount of $175 per month.

if no break had been taken. Thus, as Class B longshoremen are generally elevated to Class A status within five years of being registered as Class B longshoremen, an injured Class B longshoreman may still to be elevated to Class A status while on injury leave. Moreover, if a Class A or Class B longshoreman is injured off the job, or if an employer challenges whether the injury is job related, the employee receives an indemnity payment from the joint private benefit program operated by the Union and the Employer.[12]

We conclude that this allegation should be dismissed, absent withdrawal, because the pro rata fee charged to injured longshore workers is reasonably related to the value of the continued services and benefits provided to them. A union may charge non-member hiring hall users a "fee reasonably related to the value of the service provided;"[13] the hiring hall fee must represent the non-members' pro rata share of the costs of operating the hiring hall."[14]

Here, injured Class B longshoremen continue to remain registered at the hiring halls, and when they are able to return to work, they return as if no break had been taken. They continue to progress to Class A status as if they had been able to work, perhaps even being elevated to Class A status while on disability or injury leave. Finally, if they are injured off the job, or if an employer challenges whether the injury is job related, they may receive indemnity payments for up to one year from a Union/Employer private benefit program solely based on their status as hiring hall registrants. Therefore, we conclude that because longshore workers out on disability continue to be registered as hiring hall users and to receive other services and benefits based on their status as hiring hall registrants, the required hiring hall fees are reasonably related to such services and are properly chargeable to Class B longshoremen.

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[12] Payments under this program may last for up to one year.

[13] Communications Workers Local 22 (Pittsburgh Press), 304 NLRB 868, 868 (1991), remanded 977 F.2d 652 (D.C. Cir. 1992).

[14] Morrison-Knudson Co., 291 NLRB 250, 251 (1988); IATSE, Local 640 (Associated Independent Theatre Co.), 185 NLRB 552, 558 (1970); Homan, 137 NLRB 1043, 1044 (1962).

V. Employer Liability

Pursuant to their collective-bargaining agreement, the Union and the Employer jointly operate and administer the hiring halls at issue here. Thus, each of the hiring halls is operated by a local Joint Port Labor Relations Committee (JPLRC) comprised of Union and Employer representatives. Under the parties' collective bargaining agreement, the amount and manner of paying each hiring hall's fees is fixed by the local JPLRC. The JPLRCs are subject to the ultimate control of the Coast Labor Relations Committee (CLRC), a joint Union/Employer committee at the International level.

Based upon the Employer's participation in the JPLRCs and the CLRC, and these entities' involvement in, and responsibility for, the setting of the non-member hiring hall fees at issue here, the Region has submitted whether the Employer violated Section 8(a)(1) and (3) and, if so, to what extent the Employer should be found liable for whatever fees are found to have been unlawfully charged to the Class B longshoremen. We conclude that the Employer violated Section 8(a)(1) and (3) based on its involvement as the joint operator of the hiring halls which required the unlawfully excessive hiring hall fees, and that it should be assigned secondary liability in compliance.

In Wolf Trap Foundation for the Performing Arts,[15] the Board held that, where it is shown that the employer knew or should have known of a union's unlawful hiring hall conduct pursuant to the parties' collective-bargaining agreement, the employer as well as the union will be found to have violated the Act. The Board noted that an employer may reasonably be charged with notice, "where [a contract] requires discrimination, or where the discriminatory acts were widespread or repeated or notorious."[16]

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[15] 287 NLRB 1040 (1988) decision supplemented by 289 NLRB 760 (1988).

[16] Id. quoting Lummus Co. v. NLRB, 339 F.2d 728, 737 (D.C. Cir. 1964). In Wolf Trap, the Board found that only the charged employers who maintained contracts with the union, which on their face required unlawful discrimination, could be charged with knowledge of that discrimination and thus held liable for the union's unlawful conduct pursuant to those contractual clauses. A third employer, which had no written contract with the union and which could not otherwise be charged with knowledge of the union's

This result is consistent with an earlier case involving the same parties and same joint hiring hall arrangement. In Pacific Maritime Association,[17] the Board adopted the ALJ's conclusion that the Union violated Section 8(b)(1)(A) and (2) by discriminatorily refusing to dispatch certain employees on the basis of their sex, and that the employer, as joint operator of the hiring hall, violated Section 8(a)(3) and (1) for the union's conduct.[18]

Here, the Employer and Union jointly delegated the responsibility for setting the amount of the hiring hall fees and the manner for paying them to the JPLRCs, which include Employer as well as Union representatives. Thus, the Employer and Union jointly administer and operate the hiring halls, including setting the hiring hall fees. Therefore, we conclude that the Employer violated Section 8(a)(1) and (3) as joint operator of the hiring halls for any excess in hiring hall fees charged to non-member Class B longshoremen because it, along with the Union, was responsible for setting the hiring hall fee structure.

We note that, in backpay cases involving joint employer and union violations, the monetary liability is generally apportioned between the respondents on a joint and several basis.[19] Here, however, there is no backpay at issue -- the only monetary remedy would require the return of unlawfully-collected excessive hiring hall fees, all of which went to the Union. In these circumstances, it would be inappropriate to charge the Employer with equal liability for the return of such funds. Rather, in accordance with the Board's general practice of initially seeking full reimbursement of dues paid from the party who

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discrimination, was absolved of liability for the union's discriminatory actions. 287 NLRB at 1041.

[17] 209 NLRB 519, 525-526 (1974). As in the instant case, the employer and union were parties to a collective bargaining agreement which provided for the establishment of a committee comprised of employer and union members to jointly administer and operate the employer/union hiring hall. Id. at 520.

[18] Id. at 526.

[19] See, e.g., Wolf Trap, 287 NLRB at 1042.

was the ultimate recipient of the funds involved,[20] the Union should be held primarily liable for the disgorgement of the excess fees, with the Employer being held secondarily liable, i.e., only responsible for making the affected employees whole if the Union fails to do so. Thus, while the Employer nonetheless violated Section 8(a)(1) and (3), full compliance by the Union, the sole recipient of the unlawfully-collected funds, would eliminate the need for monetary relief from the Employer.

Accordingly, the Region should issue a Section 8(b)(1)(A) and 8(a)(1) and (3) complaint, absent settlement, alleging that the Union and the Employer unlawfully charged non-members for its litigation-related expenses in connection with a prior unfair labor practice case and the instant charges, and for its work on the TWIC worker identification program.[21] In making employees whole for these violations, the Union should be held primarily liable for the disgorgement of the excess fees, with the Employer being only secondarily liable. All of the other chargeability allegations addressed here should be dismissed, absent withdrawal.

B.J.K.

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[20] See, e.g., Hermet, Inc., 222 NLRB 29 (1976); SuCrest Corporation, 165 NLRB 596 (1967), enfd. 409 F.2d 765 (2d Cir. 1969).

[21] In making its chargeability calculations, the Region should take into account to what extent each local union herein involved charged Class B longshoremen the International Fee amount during the applicable 10(b) period.